## ARTICLE 6 NONCONFORMING USES

#### DIVISION 1 GENERAL

#### Section 6.100 General

A nonconforming use is any existing use that does not conform to the use regulations of this Code for the zoning district in which such nonconforming use is located, as a result of either the adoption or amendment of this Code, or a final administrative or judicial decision precluding the County from enforcing this Code specific to a use on the basis of estoppel, laches, or waiver.

- A. Uses are not considered nonconforming due to inadequate parking.
- B. Uses which are nonconforming shall not be eligible to apply for a special use permit for a use of community significance.
- C. Except as otherwise provided in this Section, a nonconforming use may be continued and normal or routine maintenance of a structure containing a nonconforming use shall be permitted.

#### Section 6.110 Enlargement or Alteration of a Nonconforming Use

- A. **No Enlargement or Alteration of Nonconforming Use.** The right to continue a nonconforming use terminates immediately when the nonconforming use is enlarged, expanded, extended, or altered in any of the following ways, and the property owner does not successfully pursue any of the options specified in these regulations within thirty (30) calendar days after the Land Use Administrator provides written notification of an alleged illegal enlargement or alteration to the owner.
  - 1. The addition of a new structure containing, or accessory to, the nonconforming use.
  - 2. Enlargement or alteration of a structure containing, or accessory to, the nonconforming use including but not necessarily limited to an increase in floor area, an increase in height, or any other alteration or improvement in excess of normal or routine maintenance of the structure.
  - 3. Enlargement or alteration in the land area occupied by the nonconforming use, unless the basic nature of the use, at the time it became nonconforming, clearly indicated or contemplated such an increase or alteration.
  - 4. Any other enlargement or alteration of the nonconforming use which has the effect or threatened effect of creating a hazard or nuisance on or off the property, of adversely affecting the character of the neighborhood, or of intensifying the use of the land or its need for services.

- 5. Removal or replacement of any structural member in a use for which the County is precluded from enforcing this Code specific to use on the basis of estoppel, laches, or waiver.
- 6. The following shall not be considered prohibited enlargement or alteration:
  - a. A change of ownership of the property.
  - b. An alteration or expansion which the Land Use Administrator determines is necessary to rectify a hazardous health or safety situation or to comply with the public health or safety requirements of another governmental entity having lawful jurisdiction over the structure.
  - c. An extension of the nonconforming use within the structure containing the use, provided that such extension is not accompanied by an alteration of the structure falling within category (b), above.
  - d. The addition of a solar energy device to a structure containing a nonconforming use.
  - e. Any replacement or upgrading of outmoded or worn equipment or supplies.
- B. **Nonconforming Agricultural Uses**. Owners of legal building lots containing agricultural uses which have become nonconforming as a result of adoption or amendment of this Code may restore, modify, and maintain the existing structures, and may construct new conforming structures, provided such structures are directly related to the agricultural use, and provided the use is not enlarged or altered in any other way.

### Section 6.120 Change of a Nonconforming Use

- A. **Change to Conforming Use**. A nonconforming use may be changed only to a use which is conforming in the zoning district in which the use is located.
- B. **Termination of Nonconforming Use.** Any change of a nonconforming use to any other use shall immediately terminate the right to continue the nonconforming use. Thereafter, the property shall be used only in conformity with the use provisions of its zoning district.

## Section 6.130 Destruction of a Structure Containing a Nonconforming Use

- A. **Structure Deemed Destroyed**. A structure containing a nonconforming use shall be deemed destroyed when either greater than fifty (50) percent of its floor area, or greater than fifty (50) percent of its actual value (as determined by the Costilla County Assessor) is destroyed.
- B. **Termination of Nonconforming Use**. The right to continue a nonconforming use terminates immediately when the structure containing that use is destroyed by an intentional act of the property or structure owner or their agent.
- C. **Restoration of Structure**. In all other cases, when a structure containing a nonconforming use is destroyed, the structure may be restored, and the nonconforming use may be reestablished.
  - 1. Restoration of the structure must be commenced within six (6) months after the date on which the nonconforming structure was destroyed and completed within one year after the date on which the restoration was commenced.
  - 2. These times may be extended for a reasonable period, if approved by the County Commissioners at a public hearing upon a showing of extraordinary circumstances by the property owner or their agent.

# Section 6.140 Abandonment of a Nonconforming Use

- A. **Termination of Nonconforming Use**. The right to continue a nonconforming use terminates as soon as the use is abandoned through the discontinuance of the use for an uninterrupted period of six (6) months or more, as a result of causes within the control of the property owner or their agent.
- B. **Termination of Seasonal Nonconforming Use**. If the nonconforming use is a seasonal use, the use shall be terminated if it is discontinued for an entire single season based upon the history and nature of the use.
- C. **Abandonment of Seasonal Nonconforming Use.** Any nonconforming use may be abandoned in less than six (6) months or a season, as applicable, if the property owner expressly states an intent to abandon the use, or engages in action which unambiguously expresses an intent to abandon.
- Section 6.150

  Notice of Termination in the Event of Unlawful Enlargement or

  Alteration of a Nonconforming Use, Change of Use, Abandonment of
  a Nonconforming Use, or Destruction or Damage to a Structure

  Containing a Nonconforming Use
- A. **Written Notification**. In the event that the Land Use Administrator receives information that the right to continue a nonconforming use has been or may have been terminated, the Director shall provide a written notification of this determination by first class mail to the

property owner, and to the parcel address, all as shown on the records of the County Assessor. The property owner shall have thirty (30) calendar days after the date of the notification within which to provide evidence satisfactory to the Administrator to show that the determination is in error, to abate the illegal enlargement or alteration, or to file an appeal of the Administrator's determination to the Board of County Commissioners. In any appeal, the property owner shall have the burden to show that the right to continue the nonconforming use was not terminated according to the applicable provisions of this Article, when judged in light of the history and nature of the use and the circumstances of the alleged termination.

B. **Right to Bring Enforcement Action**. Nothing in these regulations shall alter or diminish the County's right to take enforcement action against the unlawful continuation of a nonconforming use. Except in the case of an illegal enlargement or alteration for which the owner shall be provided with a thirty (30) day opportunity to abate, any failure by the Administrator to provide a notification of a determination of termination as provided for in this regulation shall in no way entitle the property owner to continue or resume a nonconforming use terminated under provisions of these regulations.